

Appl. No. 10/039,753
Amdt. dated: July 26, 2006
Response to Office Action of July 3, 2006

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REMARKS

Claims 1-10, 23, 25-26, 28-29, and 31-33 are pending in this application. Claims 2-6 are withdrawn from consideration as being drawn to a non-elected invention or a non-elected species. Claims 1, 7-10, 23, 25, 26, 28, 29, and 31-33 are rejected. By the present amendment, claims 1, 2, 6, 23, 26, 28 and 33 to replace the term "circulating" leukocytes with "blood" leukocytes. As this amendment is fully supported by the present application, the amendments add no new matter.

Applicant thanks the Examiner for the telephone conferences of July 12, 2006 and July 25, 2006 in which dismissal by the United States Supreme Court of Laboratory Corp. of Am. Holdings v. Metabolite Labs (hereinafter "the Metabolite case") was discussed.

In view of the above-described amendments and following remarks, reconsideration of claims 1, 7-10, 23, 25, 26, 28, 29, and 31-33 are respectfully requested.

Applicant also requests rejoinder of claims 2-6, which depend from amended claim 1, and consideration of the English abstract of WO 02/50550, which Applicants mailed to the Patent Office on April 29, 2004 and which was docketed as being received by the Patent Office on May 3, 2004.

§102/103 Rejections

Claims 1, 7-10, 23, 25-27, 29, 31 and 33 are rejected under 35 USC §102(b) as being anticipated by Minota et al. Claims 23, 28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minota et al in view of the known assay at pages 13-14 of the specification. (See page 2 of the Office Action.

Claim 27 is no longer pending, and thus the rejection is moot.

In view of the dismissal by the Supreme Court of the Metabolite case and previous discussions with Examiner Nolan regarding Minota et al, Applicants submit that claims 1, 7-10, 23, 25, 26, 28, 29, and 31-33 are neither anticipated nor rendered obvious by Minota et al.

In view of the above-described amendments and remarks, applicants submit that claims 1, 7-10 23, 25, 26, 28, 29, and 31-33 are now in conditions for allowance. Applicants request rejoinder of claims 2-6 to these claims, and prompt notice of allowance of the pending claims. If

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the Examiner has any questions regarding the amendments or remarks, he is encouraged to call Pamela A. Docherty, at (216) 622-8416.

Respectfully submitted,

Date:

July 26, 2006

By:

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